

MEMORANDUM OF LAW

DATE: January 10, 1986

TO: J.J. Holodnak, Assistant City Auditor and
Comptroller

FROM: City Attorney

SUBJECT: IRS Regulations Regarding Use of City Vehicles

You have recently asked this office if you are properly interpreting the provisions of Public Law 99-44 in the preparation of a Council Policy plan concerning employee use of City of San Diego vehicles. You have also asked us to review your proposed plan to report as income to the Internal Revenue Service certain related fringe benefits.

Public Law 99-44, 99 Stat. 77 (1985) amended certain provisions of the Deficit Reduction Act of 1984. The relevant provisions of Public Law 99-44 state as follows:

**SEC. 3 EXEMPTION FROM REQUIRED INCOME TAX
WITHHOLDING FOR CERTAIN FRINGE
BENEFITS.**

Section 3402 of the Internal Revenue Code of 1954 (relating to income tax collected at source) is amended by adding at the end thereof the following new subsection:

**EXEMPTION FROM WITHHOLDING FOR ANY
VEHICLE FRINGE**

**BENEFIT.-(1) EMPLOYER ELECTION NOT TO
WITHHOLD-**The employer may elect not to deduct and withhold any tax under this chapter with respect to any vehicle fringe benefit provided to any employee if such employee is notified by the employer of such election (at such time and in such manner as the Secretary shall by regulations prescribe). The preceding sentence shall not apply to any vehicle fringe benefit unless the amount of such benefit is

included by the employer on a statement timely furnished under section 6051.

(2) EMPLOYER MUST FURNISH W-2.-Any vehicle fringe benefit shall be treated as wages from which amounts are required to be deducted and withheld under this chapter for

purposes of section 6051.

(3) VEHICLE FRINGE BENEFIT.- For purposes of this subsection, the term "vehicle fringe benefit" means any fringe benefit-"(A) which constitutes wages (as defined in section 3401), and
(B) which consists of providing a highway motor vehicle for the use of the employee."

On November 6, 1985, the Internal Revenue Service responded to these amendments by publicly amending its temporary regulations in 50 Fed. Reg. 215 (1985) (proposed November 6, 1985).

After reviewing Public Law 99-44 and the new regulations, we believe that you have correctly interpreted the Internal Revenue Code in proposing the following policies:

1. The Auditor and Comptroller will report the following to the IRS as income to an employee, but without withholding:

(a) The amount of C or CP mileage at \$.28 a mile received by the employee because this rate exceeds the IRS standard of \$.21 per mile.

(b) Monthly car allowances.

(c) The base value of a furnished City vehicle plus the value of gasoline furnished by the City.

(d) The IRS determined daily commuting charge for any furnished City vehicle which the IRS has determined to be nonexempt.

2. Each January, the Auditor and Comptroller will send out an annual reminder to all employees affected by these policies.

3. Currently, personal use of nonexempt vehicles is prohibited by the IRS regulations except for de minimus personal use.

4. "Pool" vehicles may not be used for commuting.

5. The following vehicles may be used for commuting and personal use within City limits and are exempt from income reporting but may not be used for vacation or recreational trips.

(a) Marked police and fire vehicles.

(b) Unmarked vehicles used by the police department if authorized and incidental to a law enforcement function such as being able to respond to emergencies or to report to a stakeout.

(c) Certain qualified specialized utility repair trucks which are taken home by the employee in order to be able to respond to emergency situations for purposes of restoring or maintaining electricity, gas, telephone, water, sewer or steam utility services.

We will notify you if and when there are any changes to the temporary regulations which affect the above policies.

JOHN W. WITT, City Attorney

By

John M. Kaheny, Deputy

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